

RESOLUTION

RESOLUTION OF THE TOWNSHIP OF OCEAN, COUNTY OF MONMOUTH, DECLARING ITS INTENT TO COMPLY WITH ITS *MOUNT LAUREL* OBLIGATIONS AND TO SERVE AS A “CATALYST FOR CHANGE” WITHOUT THE NECESSITY OF THE FILING OF ANY ADDITIONAL AND UNECESSARY MOUNT LAUREL LAWSUITS

WHEREAS, in *Mount Laurel II*, the New Jersey Supreme Court ruled, subject to various other limitations, that, in order for a plaintiff to be entitled to a builder’s remedy, it must “succeed in litigation” (see *Mount Laurel II* at 279-280); and

WHEREAS, in 2002, the Supreme Court underscored that a developer must be a “catalyst for change” in order to qualify as a successful plaintiff (see *Toll Bros. v. Tp. of West Windsor*, 173 N.J. 502, 507 (2002)); and

WHEREAS, even though Ocean Township is a fundamentally inclusionary community consisting of in excess of 3,000 low and moderate income apartments, senior citizens housing and single family units and in no way used its zoning powers to exclude the poor, on or about September 3, 2009, BVB II Associates (“BVB”) filed a builder’s remedy lawsuit against the Township of Ocean, demanding that the Township comply with its Mount Laurel requirements and seeking site specific relief for the construction of a court-ordered inclusionary development; and

WHEREAS, the Township hereby stipulates that, on the date BVB filed suit, the Planning Board had not adopted and the Township had not endorsed a Housing Element and Fair Share Plan that satisfied Ocean’s obligation to provide sufficient low and moderate income housing pursuant to COAH’s *current* substantive regulations; and

WHEREAS, however, the Township contends that its failure to satisfy its obligations did not arise due to exclusionary zoning, but instead is a direct result of several fundamental flaws in COAH’s regulations; and

WHEREAS, the Township is aware of several pending appeals to COAH’s regulations, and is aware that a decision by the Appellate Division regarding these appeals will likely occur in the near future; and

WHEREAS, notwithstanding these pending appeals, the Township is considering the exercise of its right to challenge the legal validity of certain COAH regulations and, accordingly, reserves its right to comply “under protest”; and

WHEREAS, notwithstanding the Township’s reservation of rights, BVB is the “catalyst for change” and has therefore satisfied its burden on the first element of the Mount Laurel builder’s remedy test; and

WHEREAS, while there is no need to further litigate this one issue with BVB, all other issues relating to BVB’s lawsuit including, but not limited to project and site suitability and the developer’s failure, in good faith, to obtain relief without litigation have not been stipulated to by the parties and are properly before the Court; and

WHEREAS, despite the aforementioned lawsuit and any associated defenses thereto, the Township of Ocean now wishes to formally declare its intent to comply, to the extent that it has not already complied, with its Mount Laurel obligations in their current form and as may be further amended, and to serve as the “catalyst for change” vis-à-vis any additional entities that are considering the filing of any future Mount Laurel builder’s remedy or other exclusionary zoning lawsuits; and

WHEREAS, the Township of Ocean wishes to make clear that the Township had previously taken action to achieve constitutional compliance with it’s obligations through the hiring of independent professionals to review and develop a potential plan and through this Resolution will ensure that the Township will continue to take the actions necessary to achieve constitutional compliance, thus rendering any additional Mount Laurel lawsuits as “unnecessary litigation.”

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Township of Ocean hereby formally declares its intent to achieve constitutional compliance, to the extent it has not done so already, but reserves its right to comply “under protest”.
2. The Township directs its professionals to review the current state of Mount Laurel compliance and to take whatever actions may be necessary to achieve a formal judgment of constitutional compliance by the Court or a grant of substantive certification by the Council On Affordable Housing.
4. The Township hereby directs its professionals to furnish this Resolution to the Court and to place this Resolution on file in Town Hall so as to put the public and all interested parties on notice of the Township’s formal commitment to comply with its Mount Laurel obligations.

This Resolution shall take effect immediately.

ROLL CALL: Garofalo, Hiers, Schepiga, Siciliano, Larkin

CERTIFICATION

*I hereby certify that this is a true copy of a resolution passed by the Township of Ocean Governing Body at their meeting held on **October 19, 2009**.*

Vincent Buttiglieri, RMC/CMC
Township Clerk